

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DEVIN WARREN SIZEMORE,

Defendant.

Case No. 6:21-cr-00138-RAW-1

**MOTION FOR NOTICE OF
INTENT TO INTRODUCE
404(b) EVIDENCE**

Defendant Devin Sizemore, by and through his assigned counsel, and pursuant to Rule 404(b) of the Federal Rules of Criminal Procedure, the Fifth and Sixth Amendments to the United States Constitution, and Local Criminal Rule 12.1(E), moves this Court for an order requiring the government to provide notice of its intention to offer evidence of other crimes, wrongs, or bad acts allegedly committed by Defendant, and to disclose the facts and circumstances underlying such evidence.

Rule 404(b)(1) prohibits the government from introducing “[e]vidence of any other crime, wrong, or act . . . to prove a person’s character in order to show that on a particular occasion the person acted in accordance with the character.” However, subsection (b)(2) of Rule 404 allows this evidence for “another purpose, such as proving motive,

opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.” Before introducing this evidence, the government must “provide reasonable notice . . . so that the defendant has a fair opportunity to meet it” and “articulate in the notice the permitted purpose for which the prosecutor intends to offer the evidence.” Fed. R. Evid. 404(b)(3)(B).

To date, the government has not yet notified defense counsel of any evidence of prior crimes, wrongs, or acts in intends to introduce at trial. Because the attempt to introduce such evidence is typically contested and requires preparation by the defense, we ask that this Court issue an order requiring the government to provide timely notice, before trial, in compliance with Fed. R. Evid. 404(b)(3). Upon receiving notice, defense counsel reserves the right to seek to preclude any noticed evidence under Rules 401, 402, 403, 404 and 609 of the Federal Rules of Evidence.

February 21, 2022

Respectfully submitted,

/s/

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Certificate of Electronic Filing and Service

This is to certify that on this 21st day of February, 2022, I caused the foregoing instrument to be filed with the Clerk of the Court using the ECF System for filing, with electronic service to be made via CM/ECF to Rebecca Dunnan, AUSA, and to all counsel of record. To counsel's knowledge, there are no non-ECF registrants who are counsel in this case.

/s/

Lisa A. Peebles
Federal Public Defender